

Patent Appln. No. 10/828,439  
Atty. Docket No. PC19450D

### **REMARKS**

#### ***Power of Attorney***

Inasmuch as the Power of Attorney and Statement under 37 CFR 3.73(b) filed 21 October 2005 have not been acknowledged in this application, Applicants are resubmitting the same herewith as copies of the original.

#### ***Status of the Claims***

The final rejection mailed 27 December 2005 rejects claims 67-78 and objects to claims 79-81 as depending from a rejected claim.

By this Amendment, Applicants cancel claims 67-81 without prejudice or disclaimer and add new claims 82-85. Entry of the Amendment is respectfully requested.

#### ***Response to Disclosure Objection***

The disclosure is objected to as lacking application numbers for applications cited at pages 12 and 18 of the specification.

Applicants believe that this issue was adequately addressed by the amendment filed 15 July 2005. Accordingly, reconsideration and withdrawal of the objection are respectfully requested. If Applicants have misunderstood the objection, clarification is then requested.

#### ***Response to Written Description Rejection***

Claim 70 is rejected under 35 USC § 112, ¶ 1, as lacking written description. Specifically, the rejection states that the claimed ratio of multimer to monomer is not supported in the specification.

Applicants submit that the rejection is moot in light of the new claims. Moreover, ¶ 174 at page 54 and Figure 5 describe ranges of multimer ratios.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

#### ***Response to Indefiniteness Rejection***

Claims 72 and 73 are rejected under 35 USC § 112, ¶ 2, as being indefinite. Claims 72 and 73 are said to be substantial duplicates.

Applicants submit that the rejection is moot in light of the new claims. Moreover, claims 72 and 73 are of different scope because claim 72 specifies a ratio of stabilizer (i.e., mannitol plus any other stabilizer material) to dalbavancin, whereas claim 73 specifies a ratio

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of mannitol to dalbavancin. According to claim 73, a second stabilizer would not factor into the ratio. According to claim 72, all stabilizers including mannitol factor into the ratio.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

#### ***Response to Obviousness Rejection***

Claims 67-71 and 74-78 are finally rejected under 35 USC § 103(a) over US Patent No. 5,750,509 to Malabarba et al. ("MALABARBA") for the reasons set forth in the Office Action of 31 August 2005. The rejection states that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability, and that the compositions only have a pH when reconstituted.

Applicants respectfully submit that, among other things, the final rejection mistakes the invention for a new use of an old product. That is, even assuming the proposed combination, the rejection mistakenly assumes that any combination of dalbavancin with the cited excipients per se results in the claimed invention. With respect to pH, it is true that such is measured when reconstituted. However, there are actually present in the dry formulation any required pH adjustment materials that will manifest as the desired pH when reconstituted.

Nonetheless, Applicants have canceled the rejected claims without prejudice or disclaimer and respectfully submit that the rejection is moot in light of the new claims.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

#### ***Response to Claim Objection***

Claims 79-81 are said to be directed to allowable subject matter but dependent on a rejected claim. In response to the objection, new claim 82 is presented as an independent containing the elements of canceled claim 79 claim. Claims 83-85 depend from claim 82.

Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

#### ***Conclusion***

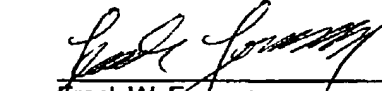
In view of the above, Applicants respectfully submit that the pending claims are allowable in their present form, and that the application is otherwise in condition for allowance. The Examiner is respectfully requested to withdraw the rejection and, as the next official action, to provide a Notice of Allowance.

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If any issues remain which can be resolved by a telephone conference, or should the Examiner have any questions or comments regarding this matter, the Examiner is respectfully invited to contact the undersigned at the telephone number shown below.

Date: 3 MAR 06

Respectfully submitted,

  
Frank W. Forman  
Attorney for Applicant  
Reg. No. 42,547

Pfizer Inc - Patent Department  
Eastern Point Road, MS8260-1611  
Groton, Connecticut 06340  
(860) 715-5669  
Frank.W.Forman@Pfizer.com